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EXAMINER

NOVOSAD, JENNIFER ELEANORE

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 08/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/051,948

Applicant(s)

ROSENBERG ET AL.

Examiner

Jennifer E. Novosad

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 July 2004 and 07 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. <u>08/04/2005</u> . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____. | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

At the outset, it is noted that the claims submitted on June 7, 2005 are not compliant with 37 CFR 1.121. *In particular*, claims 18-23 should be listed after claim 17, and not at the beginning of the list of claims. *However*, to expedite proceedings, the examiner only wishes to point this out to the applicants for future reference.

This final Office action is in response to the election (*with traverse*) and amendment filed June 7, 2005 by which claims 4 and 5 were amended and claims 18-23 were canceled. It is noted that claims 1-3 were canceled in an amendment filed July 27, 2004.

Election/Restriction

Applicant's election with traverse in the reply filed on June 7, 2005 is acknowledged. The traversal is on the ground that "there is no material difference whether the separators are inserted into the apertures before or after the frames are slidably affixed together". While applicant has traversed the restriction requirement, applicant has decided to cancel the claims, i.e., claims 18-23, drawn to the non-elected invention.

With respect to Groupings I and II, as the claims were set forth in the restriction requirement, in view of applicant's amendment to claims 4 and 5, Groups I and II are now grouped together and claims 4-17 have been examined on the merits, as advanced below.

Drawings

At the outset, it is noted that drawings were submitted with the amendment filed July 21, 2003. It appears then that applicant intended to file drawings with the amendment filed on July 27, 2004. *However*, there were no drawings present with the amendment filed July 27, 2004. *Thus*, reference to the following drawings objections, including the introduction of new matter, are taken relative to the drawings filed July 21, 2003, since that is the latest version of the drawings present on the record.

The drawings were received on July 21, 2003. These drawings are disapproved since the drawings contain new matter. *In particular*, the drawings submitted on July 21, 2003 do not contain the same features as the photographs submitted with the application on January 22, 2002. It is noted that the copies of the photographs are of very poor quality, so the examples discussed below should not be necessarily be taken as the only new matter being introduced.

For example, the following features are shown in the drawings filed July 21, 2003 while these features are NOT shown in the photographs filed January 22, 2002:

- (a) element 8, which is deemed a compartment;
- (b) end pieces (5);
- (c) elements (7), i.e., these elements are not labeled in the specification, and how these elements extend through the holes, as in Figure 3; and
- (d) the embodiment and more specifically the tracks (1), as in Figure 1, are not the same as the tracks shown in photo 3.

Also, it is noted that the photographs contain, at least elements (1), deemed at "legs", that are NOT present in the figures.

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Further, the drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 7.

Furthermore, on page 12 on the specification (as submitted on July 27, 2004), reference is made to "Figure 4", but there is no Figure 4 present with the drawings filed July 21, 2003.

Furthermore, Tthe drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. *Therefore*, in view of the new matter situation, (a) the U-shaped separators, as in claim 8, (b) the channels, as in claim 13, and (c) the separators, straight or U-shaped, as in claims 7 and 8, must be canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Finally, the drawings submitted on July 21, 2003 contain a sheet of what appears to be a page from a catalogue or brochure. Accordingly, it is unclear what applicant's intention is concerning this page. It is noted that such a sheet is not permitted.

Specification

The amendment filed July 27, 2004 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall

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introduce new matter into the disclosure of the invention. For example, the added material which is not supported by the original disclosure is as follows:

- (a) reference to the "end pieces", as on page 11, line 4;
- (b) "precisely" in line 15 of page 11;
- (c) reference to the "pegs", on page 11, line 16;
- (d) lines 17-19 of page 11 which states "The pegs protrude through the top of the outer structure but do not protrude through the bottom of the outer structure. The pegs go into the holes of the inner structure but do not protrude through the inner structure";
- (e) lines 19-20 of page 11 which states "The distances of protrusions of the outer and inner structure are such that the inserted pegs are all the same height";
- (f) reference to the "compartment", as in line 21 of page 11;
- (g) the sentence bridging pages 11 and 12, which states that the movement is "fixed"; and
- (h) lines 3-4 of page 12 which refers to the dishes "rolling off in the direction perpendicular to the direction of the length of the rails".

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 4-17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not

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described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. For example, (a) "leg located at each corner", as in claim 4; (b) "separators" as in claim 5; (c) "straight" as in claim 7; (d) "U-shaped separators", as in claim 8; (e) the "lateral flanges" as in claim 14 and "L-shaped flanges" as in claim 15; and (f) the "enameled metal" and "wooden" construction, as in claims 16 and 17, respectively.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Insomuch as the claims are best understood (in view of the new matter in the drawings, specification, and claims), claims 4-17 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,121,681 (Chang '681).

Chang '681 discloses a structure having a pair of box-type frames (10 and 20), whereby frame (20) defines an inner frame which is inserted into the frame (10), defined as the outer frame, so that the length of the structure can be adjusted; each of the frames having rails, i.e., at 11 for frame 10 and top and bottom of frame 20; the inner frame (20) has a leg (at 22) that lies outside of the outer frame when the inner frame is inserted thereinto; each of the frames having apertures (14 and 21) in the top surface that can align when the frames are fitted together;

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separators (30), which have straight sections (at 31) and which are also defined as U-shaped (see Figure 2), have ends that fit into the apertures (14 and 21).

Response to Arguments

The indication of allowable subject matter, as set forth in the Office action mailed January 16, 2003, is noted. *However*, with respect to applicant's statement (at the top of page 6 of the remarks submitted on July 27, 2004) that "The Examiner indicated that the prior art of record neither taught nor suggested the structure as presently claimed in claim 4", it is noted that this is not accurate. *In particular*, applicant did not just correct the Section 112, 2nd paragraph rejections. *Rather*, the subject matter of claim 4 contains several new matter limitations which makes claim 4 unequivocal to original claim 1, which was previously indicated to be allowable.

Accordingly, applicant's arguments/discussion with respect to claims 1-3 have been considered but are moot in view of the new ground(s) of rejection. The new grounds of rejection were necessitated by the amendment canceling claims 1-3 and adding claims 4-17, whereby claims 4-17 introduced numerous new matter limitations into the claims.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

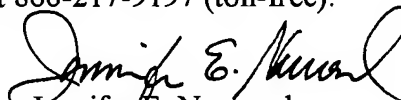
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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is 571-272-6832. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard E. Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jennifer E. Novosad
Primary Examiner
Art Unit 3634

August 4, 2005